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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,445	06/20/2005	Yoshinori Komatsu	Q88710	6821
65565	7590	12/08/2009	EXAMINER	
SUGHRUE-265550			O HERN, BRENT T	
2100 PENNSYLVANIA AVE. NW				
WASHINGTON, DC 20037-3213				
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			12/08/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SUGHRUE265550@SUGHRUE.COM  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/539,445	<b>Applicant(s)</b> KOMATSU ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1 and 8 are pending.

### **WITHDRAWN REJECTIONS**

2. All rejections of record in the Office action mailed 5/28/2009 have been withdrawn due to Applicant's amendments in the Paper filed 8/28/2009.

### **NEW REJECTIONS**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Follmer (US 3,896,975) in view of Matsuda et al. (US 5,773,073).

Follmer ('975) teaches a foamable water-in-oil type emulsion (*See col. 2, ll. 18-23, an emulsion that is capable of being foamed. The claims are interpreted as being directed to an emulsion that is capable of being foamed and not a foamed emulsion.*), which is contained in an aerosol container (*See col. 2, ll. 18-23.*), wherein the emulsion comprises an emulsifier in the amount of 0.5 to 6.0 wt% based on the emulsion (*See col. 2, ll. 18-23, 55-64 and col. 8, ll. 37-67, lecithin emulsifier at 4%.*); wherein the oil in the water-in-oil type emulsion is an edible oil which has a cloud point (ASTM) of about 4.4°C (40 °F) or lower, the container comprises a gas propellant partially dissolved in said water-in-oil emulsion (*See col. 2, ll. 18-23 and col. 8, ll. 37-67, oil in container with gas propellant. The oils including soybean oil have the above cloud points as the oils*

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*are the same disclosed in Applicants Specification. Soybean oil has a cloud point of about 14 °F as Applicant admits at page 6 of Applicant's Paper filed 5/21/2009 where Applicant refers to Table 5.3 of the Bailey's publication.);* the container has a discharging nozzle for discharging the emulsion with the gas propellant as a foam/(spread) therefrom (*See col. 2, ll. 18-23 and col. 7, ll. 53-57. The emulsion is a known foam with the same type of composition as claimed. Applicant's claimed invention is the material prior to be discharged from the container.);* the foam is formed at the time of jetting (*See col. 2, ll. 18-23 and col. 7, ll. 53-57.*), however, fails to expressly disclose wherein the emulsifier is at least one member selected from the group consisting of glycerin fatty acid ester, sucrose fatty acid ester, sorbitan fatty acid ester, and polysorbate.

Matsuda ('073) teaches glycerin fatty acid ester, sucrose fatty acid ester, and sorbitan fatty acid ester as being alternative emulsifiers to lecithin for water in oil emulsions (*See col. 3, ll. 56-67 and Abstract.*) for the purpose of providing a water in oil emulsion having excellent emulsion stability (*See Abstract and col. 3, ll. 56-67.*). As made of record, Applicant sets forth the above emulsifiers as alternatives to lecithin.

Therefore, it would have been obvious to a person having ordinary skill in the art to substitute one of the above emulsifiers as taught by Matsuda ('073) for Follmer's ('975) lecithin emulsifier in order to provide a water in oil emulsion having excellent emulsion stability.

### **ANSWERS TO APPLICANT'S ARGUMENTS**

5. In response to Applicant's arguments (*See pp. 3-5 of Applicant's Paper filed 8/28/2009*) regarding Castenmiller (US 4,874,626), Clapp et al. (US 5,156,876) and Sejap et al. (US 3,849,580), it is noted that said references are no longer cited, thus, Applicant's arguments are moot.

6. No further precise arguments are set forth.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T. O'Hern/  
Examiner, Art Unit 1794  
November 24, 2009